

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KIM DENTON, et al.,

Plaintiffs,

Hon. Janet T. Neff

v.

Case No. 1:11-cv-01203

CITIMORTGAGE, INC.,

Defendant.

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**REPORT AND RECOMMENDATION**

Plaintiff Kathy Denton and defendant CitiMortgage, Inc. have reached a resolution of this matter. It is clear to the court that plaintiff Kim Denton does not wish to proceed and is willing for his case be dismissed. To ensure that stipulated dismissal papers filed by plaintiff Kathy Denton and defendant CitiMortgage, Inc. resolve this entire matter, the undersigned issues this report and recommendation.

On June 26, 2012, plaintiff Kim Denton appeared at a status conference before the undersigned and stated that he did not want to pursue the relief requested in the complaint, i.e., modification of a mortgage loan. On July 13, 2012, defendant CitiMortgage, Inc. filed its motion for judgment on the pleadings, in which it stated:

Pursuant to Local Rule 7.1(d), on July 13, 2012, in a telephone conference with Plaintiff Kim Denton, Kim Denton (pro se) provided his concurrence for dismissal of this action because he no longer wishes to pursue the complaint. The undersigned counsel thoroughly explained that he represents CitiMortgage's interests in this matter, not Plaintiff's interests, and that the relief sought by CitiMortgage would result in dismissal of this case. Plaintiff Kim Denton stated that he desired to have the case be over. The undersigned counsel for CitiMortgage had a similar conversation with Plaintiff Kim Denton, in the presence of Plaintiff Kathy Denton's counsel, following the June 26, 2012

hearing in this case, at which time Plaintiff Kim Denton also expressed his desire to have this case dismissed and concluded.

On October 22, 2012, the undersigned ordered Plaintiff Kim Denton to show cause by November 2, 2012 why this matter should not be dismissed pursuant to Fed. R. Civ. P. 41(b) and W.D.Mich. L.Civ.R. 41.1 for want of prosecution and failure to comply with the rules and orders of this court. Plaintiff Kim Denton did not respond, although in its Notice of Contact from Pro Se Plaintiff Kim Denton Regarding the Court's Show Cause Order (Dkt. 47) defendant CitiMortgage, Inc. reported, "[Mr. Denton] continues to concur with dismissal and desires dismissal of this lawsuit as far as he is concerned. He explained that he is going through a divorce proceeding with co-plaintiff, Kathy Denton, and Mr. Denton has disclaimed any interest in the subject property."

As such, the undersigned hereby recommends that this matter be dismissed pursuant to Fed. R. Civ. P. 41(b) and W.D.Mich. L.Civ.R. 41.1 for want of prosecution and failure to comply with the rules and orders of this court. Timely objections to this Report and Recommendation shall be considered Plaintiff's final opportunity to show cause why this matter should not be dismissed.

Respectfully submitted,

Date: November 5, 2012

/s/ Ellen S. Carmody  
ELLEN S. CARMODY  
United States Magistrate Judge

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within 14 days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).